

BRA: ABC
rec'd. 6/16/99
lsb
#26069

VOLUNTARY AGREEMENT
WITH HEART & SOUL CAFE
801 PENNSYLVANIA AVENUE, S.E.
400-8TH STREET, S.E.
Case No. 26069-99042P

JUNE 16, 1999

Whereas, Heart & Soul Food Service Inc., t/a Heart & Soul Cafe, ("APPLICANT") has submitted an application to the Alcoholic Beverage Control Board to change hours of operation and to change the kind of entertainment offered at its CR licensed restaurant,

Whereas, PROTESTANTS and APPLICANT, have met to discuss issues of concern to both sides,

Whereas, PROTESTANTS want to promote the economic success of the restaurant Heart & Soul while protecting their streets from the loss of normal peace, order and quiet and the adverse impact on public safety from the loss of nearby parking spaces,

Whereas, both parties desire to form a cooperative partnership to balance the APPLICANT needs for economic opportunity and the PROTESTANTS' needs for peace, order, quiet, safety, parking and vitality of the residential real estate market,

Now, therefore, PROTESTANTS submit the following proposal for a voluntary agreement to APPLICANT, to move toward a final agreement to the mutual benefit of both parties.

The following statements, approved by APPLICANT and PROTESTANTS, attach to, and become a condition of the ABC license belonging to Heart & Soul Cafe.

TERMS:

PEACE, ORDER AND QUIET OF THE COMMUNITY

1. Noise

During live bands and DJ events, Heart & Soul shall keep front windows closed at all times and shall keep the front door closed when not used for egress. The rear door to the kitchen shall remain closed.

The decibel level of the music shall at no time rise to a level that can be heard outside the establishment.

2. Safety

The licensed manager on duty at Heart & Soul shall call police immediately regarding any patron who is ejected into the streets for hostile, lewd, violent or other illegal behavior.

On any night featuring a deejay or live **R&B** band, Heart & Soul shall hire an outside security firm with at least two cars and two security officers to patrol the area between 7th and 11th Streets and C to G Streets, S.E. with frequent attention to the rented parking lot at Hine Junior High School or other designated parking area. The patrol shall begin **two** hours before closing and continue for **1 ½ hours** after closing.

To mitigate noise and disruption to the neighborhood, the contract for the security personnel shall include the following:

Look and listen for any instances of shouting, drinking, fighting, roughhousing, weapons, signs of drunk driving, or any other disruptive behavior, such as loitering, blocking the street and sidewalk and quietly encourage individuals to tone down the noise and quickly leave the area.

Immediately call police emergency 911 from their vehicles and request assistance if any individual refuses to stop the disruptive behavior or to leave the area.

If patrons are found to continue to act in a manner as described herein, then such failure of security to alleviate the problems through the means described herein, thereby affecting the safety of pedestrians and/or the peace, order and quiet of the neighborhood, Heart & Soul shall be subject to the procedures set forth herein under subsection 9.

3. Customers

Heart & Soul agrees to the following stipulations:

Offer no promotional giveaways of unopened bottled alcoholic beverages which would allow patrons to leave the premises with the alcoholic beverages.

Make no promotions with sexually explicit photographs and/or language;

Post a sign and enforce a dress code of no sweat clothes, tennis shoes or other athletic wear during events;

Have a licensed manager on premises at all times when alcohol is being served;

Strictly check picture I.D., to ensure no sales to minors;

Use a clicker during musical events to keep track of the number of people inside to stay within the legally allowed limit on the Certificate of Occupancy;

Require all patrons to check coats to slow the rate of the mass exodus at closing time;
Allow no one to walk outside or stand outside carrying an alcoholic beverage;

Allow no nudity on premises.

Require the bandleader or deejay to remind customers to be respectful of the neighborhood and to leave the area quietly and quickly and drive home safely;

Bring down the volume and begin to raise the lights during the last set of music;

4. Litter and Trash

The APPLICANT and managers of Heart & Soul Cafe shall:

keep the patio, sidewalk, tree box and roadway gutter in front of Heart & Soul clear of litter and debris;

pick up any promotional materials left by other establishments to market to Heart & Soul's customers on music nights including flyers on cars' windshields, and/or printed promotional materials on sidewalks or park across the street from Heart & Soul.

store all garbage and trash in vermin proof containers at rear of property. These dumpsters shall be free of cracks and all doors shall be kept closed at all times when the dumpster is not in use; in compliance with D.C. laws and regulations;

maintain a contract with a trash hauling service that meets the city regulated requirement of at least 2 pick ups per week, or more if necessary to prevent overflowing;

stipulate in the trash hauling contract that no pickups shall occur before 7:30 a.m.

ADVERSE IMPACT ON RESIDENTIAL PARKING

5. Parking

Because empty, on-street parking spaces in the Eastern Market area are hard to find even without the influx of more than a hundred extra vehicles from outside Capitol Hill, and because local renters and homeowners need to park near their homes for their own personal safety, Heart & Soul agrees to rent the parking lot at Hine Junior High School or other comparable parking lot of similar size and distance for the use of its patrons.

Heart & Soul shall get approval from the principal of Hine Junior High School and the DC Board of Education to officially rent the parking lot at Hine. Heart & Soul shall comply with all relevant Board of Education regulations.

All customers shall be encouraged by signs placed in front of Heart & Soul, to park in the rented lot at Hine Junior High School or other comparable lot in distance and with sufficient size to accommodate fifty vehicles.

Additionally, the area next door to the front of Heart & Soul shall be kept clear of standing vehicles. Signs shall be placed in the driveways of Distad's Amoco stating that cars parked on their lot or in their driveways shall be towed at the owner's expense. Management, security and staff at Heart & Soul shall actively discourage blocking of these driveways.

Any vehicles double parking, blocking driveways, straddling sidewalks shall be instructed to move by APPLICANT, security and/or managers and if they do not comply, APPLICANT and/or security shall call police to ticket vehicles.

CHANGES TO RESTAURANT'S ABC LICENSE

6. Hours of Operation

The hours of operation for Heart & Soul shall be Sunday and Monday, 11 a.m. to 11 p.m., Tuesday through Thursday, 11:00 a.m. to 2:00 a.m. and Friday and Saturday 11 a.m. to 2:30 a.m. The hours of the official close of business shall be posted on the front door. After the official close of business, all customers and other members of the public shall be outside of the establishment.

The kitchen shall remain open until two hours prior to closing.

7. Music Format

The music format of Heart & Soul shall include "live easy listening jazz, poetry, dinner music" and an occasional D.J playing only easy listening jazz and dinner music; Additionally a live R&B band/DJ may appear on one weekend night only. R&B does not include "gangsta" rap, any music with profanity and go go music.

In addition, the Applicant shall not permit the following bands to play on the premises:

1. The Junkyard Band
2. Trouble Funk
3. EU
4. Chuck Brown & Soul Searchers
5. Proper Utensils
6. Rare Essence

CONDITIONS FOR LEASING PREMISES

8. Sublets

Subletting the restaurant shall be permitted under the following conditions:

The sublettor must sign a contract with Heart & Soul, sign a copy of the ABC license and a copy of the Voluntary Agreement stating compliance with all the listed requirement;

The sublettor must pay a security deposit or post bond to cover your fine under the voluntary agreement if they are responsible for any infractions;

The sublettor must get APPLICANT approval before publishing any promotional materials.

9. PROCEDURE FOR ADDRESSING VIOLATIONS OF VOLUNTARY AGREEMENT

APPLICANT shall comply with all laws, regulations and rules of the District of Columbia and specifically all those related to the sale of alcoholic beverages, as well as all terms of this agreement and their ABC license, including standards of behavior required by it.

Violations of the foregoing terms shall be subject to the following procedures:

APPLICANT and PROTESTANTS agree to keep communication open in order to share concerns and address problems and to provide remedial actions when necessary.

PROTESTANTS shall notify APPLICANT in writing, by **certified mail or regular mail**, of any violations of conditions listed in the voluntary agreement. The letter may include date, time, description of violation, response to phone call notifying APPLICANT of this violation and names of complainants and witnesses and any objective confirmatory statements by ABC investigators, police, city trash enforcement investigators, fire marshals, building inspectors, etc.

APPLICANT and PROTESTANTS agree to binding arbitration on an alleged **material** violation, unless a resolution is reached within two weeks after receipt of notification by **certified or regular** mail. APPLICANT and PROTESTANTS shall agree upon a certified arbitrator within three weeks thereafter.

The arbitrator's fees shall be split between Applicant and Protestants.

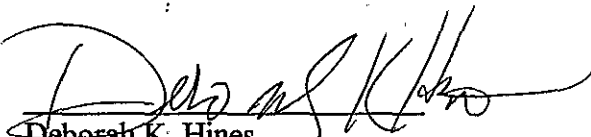
The fine for each material breach of a provision in this agreement proven to the arbitrator is \$1,750. A subsequent violation and finding of a material breach of this agreement by an arbitrator shall result in a fine of \$2,000. If there are three proven violations, by either arbitration and/or the ABC Board, Heart & Soul shall take all necessary steps to return to the terms of their license as of April 1, 1998. In addition, if the third violation results from a finding by the arbitrator shall pay a fine of \$2500.

The funds from any fine shall be used to pay the PROTESTANT'S attorney, to reimburse neighbors who have paid PROTESTANTS' attorney and/or arbitrator's fees and remaining funds to a 501(c)(3) charitable group headquartered and working in Capitol Hill.

The arbitration process is in addition to any remedies PROTESTANTS have through the ABC Board rules and regulations including but not limited to the provisions of Title 23 DCMR, Section 1513 et. seq.

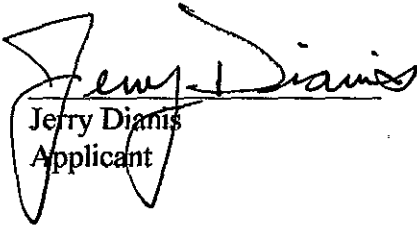
This agreement shall take effect on the date of signing by APPLICANT and PROTESTANTS and is binding on any successors, transferees or assigns.

AGREED AS TO FORM:

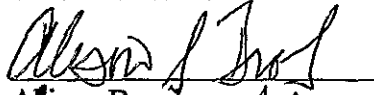

Deborah K. Hines
Attorney for Protestants

David W. Wilmot
Attorney for Applicant

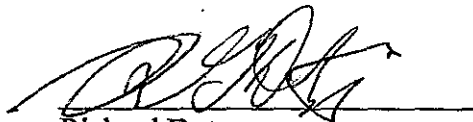
Date: 6/15/99

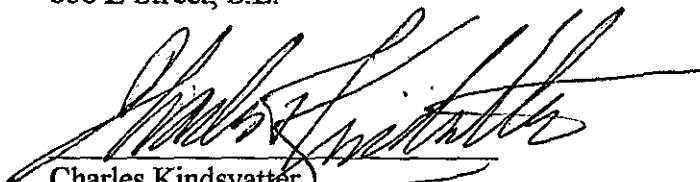

Jerry Dianis
Applicant


PROTESTANTS

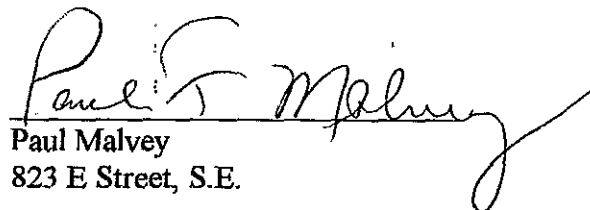

Alison Brooks ASD
810 E Street, S.E.


Ken Cooper
821 E Street, S.E.


Richard Doty
808 E Street, S.E.


Charles Kindsvatter
819 E Street, S.E.


Jill Lawrence
408 10th Street, S.E.


Paul Malvey
823 E Street, S.E.

Norris Malvey
Norris Malvey
823 E Street, S.E.

Audrey Earle Nevitt
Audrey Nevitt
1000 South Carolina Ave., S.E.

Patricia M. Petty
Patricia Petty
406 10th Street, S.E.

Jason Petty
Jason Petty
406 10th Street, S.E.

Gotlieb Simon
Gotlieb Simon
921 Pennsylvania Ave. S.E.

Andy Torres
Andy Torres
816 E. (basement), Street, S.E.

John Yellen
John Yellen
810 E. Street, S.E.

Elizabeth Yellen by J. M. S. S. H.
Elizabeth Yellen
810 E. Street, S.E.
J. M. S. S. H. attorney

#26069

AGREEMENT

Made this 26 day of November 1996, by and between Patsy Thomas, t/a Olan's on Capitol Hill (the Applicant) and Advisory Neighborhood Commission 6B, (the ANC).

WITNESSETH

WHEREAS, Applicant's application for a Class "CR" license for premises, 400 8th Street SE, ABC Application #26069, is now pending before the District of Columbia Alcoholic Beverage Control Board (ABC); and,

WHEREAS, the subject premises are located within the ANC 6B area; and,

WHEREAS, the parties desire to enter into an agreement governing certain understandings regarding the issuance of a Class "CT" Liquor License at the subject premises; and,

WHEREAS, the ability of the District of Columbia government to provide essential public services is compromised by the failure of businesses and individuals to pay their financial obligations to the government in a full and timely manner; and,

WHEREAS, the strict enforcement of health, safety, and security regulations enhances compliance with such regulations, and, in turn, preserves and enhances the peace, order, and quiet of communities within the District of Columbia; and,

WHEREAS, the Applicant herein certifies that it does not owe more than \$100 to the District of Columbia government as the result of any fine, fee, penalty interest or past due tax;

NOW, THEREFORE, the parties agree as follows:

1. In consideration of, and reliance upon, the representations reflected in the paragraphs above, the ANC hereby agrees not to oppose the Applicant's pending license application.

2. The parties further agree that any failure of Applicant to adhere to the foregoing representations would constitute grounds for the ANC to petition the ABC Board for issuance of an order to show cause pursuant to 23 D.C.M.R. 1513.5.

IN WITNESS WHEREOF, the parties have affixed hereto their hands and seals.

APPLICANT:

ANC 6B:

Olson on Capital Hill

By:

Patsy Thomas

By:

L-L Simon